

# MIGRATION TERMS AND CONDITIONS

## 1. Application

These Terms and Conditions shall apply to the provision of the services detailed overleaf ("Services") by SEM Solutions Limited (a company registered in England & Wales under number 5278623 whose registered office is at Henwood House, Henwood, ASHFORD Kent TN24 8DH) ("Supplier") to you ("Client"). No other terms and conditions shall apply to the provision of Services unless agreed upon in writing between the Provider and the Client.

## 2. Interpretation

- 2.1 A "business day" means any day other than a Saturday, Sunday or bank holiday.
- 2.2 The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.
- 2.3 Words imparting the singular number shall include the plural and vice-versa.

## 3. Services

- 3.1 With effect from the agreed commencement date and in consideration of the Fees being paid in accordance with these Terms and Conditions, the Supplier shall provide the Services to the Client.
- 3.2 The Supplier shall use reasonable care and skill in its performance of the Services and shall ensure compliance with any and all relevant codes of practice.
- 3.3 The Supplier shall use its best and reasonable endeavours to complete its performance of the Services within the time agreed as set out in this quotation; however time will not be of the essence in the performance of these obligations.

## 4. Client Obligations

- 4.1 The Client shall use its best and reasonable endeavours to provide the Supplier with access to any and all relevant information, materials, properties and to acquire any permissions, consents, licences or other matters which are required to enable the Supplier to provide the Services.
- 4.2 The Client shall carry out testing within 3 working days of any request sent by the Supplier.
- 4.3 The Supplier shall not be liable for any delay or failure to provide the Services where such delay or failure is due to the Client's failure to comply with the provisions of this Clause 4.

## 5. Fees and Initial Payment

- 5.1 The fees ("Fees") for the Services are set out in this quotation.
- 5.2 In addition to the Fees, the Supplier shall be entitled to recover from the Client reasonable incidental expenses for materials used and for third party goods and / or services supplied in connection with the Services.
- 5.3 The Client shall pay the Supplier for any additional services provided by the Supplier that are not specified in this quotation in accordance with the Supplier's then current, applicable hourly rate in effect at the time of performance or such other rate as may be agreed between the Supplier and the Client. The provisions of sub-Clause 5.2 shall also apply to such additional services.
- 5.4 The Fees are exclusive of any applicable VAT and other taxes or levies that are imposed or charged by any competent authority.
- 5.5 The Client shall be required to pay an initial payment ("Initial Payment") as detailed in this quotation at the time of accepting this quotation.
- 5.6 If the Client does not pay the Initial Payment to the Supplier in accordance with sub-Clause 5.5 the Supplier shall have the right to withhold provision of the Services until the Initial Payment is received or may terminate in accordance with Clause 9.
- 5.7 The Initial Payment shall be non-refundable unless the Supplier fails to provide the Services and is at fault for such failure (where the failure is not the fault of the Supplier, no refund shall be made).

## 6. Quotation, Contract and Variation

- 6.1 The Supplier is not obliged to accept an order for Services from the Client unless the Client has supplied references which are requested by, and satisfactory to, the Supplier.
- 6.2 This quotation constitutes written acceptance and confirmation by the Supplier of the Client's order for the Services (as agreed between the Supplier and the Client).
- 6.3 Having issued this quotation which is a contractual offer to provide the Services, the Supplier agrees to enter into a contract for the provision of Services upon the Client's written acceptance of this quotation and of these Terms and Conditions.
- 6.4 This quotation is valid for a period of 30 days only from the date shown overleaf unless expressly withdrawn by the Supplier at an earlier time.
- 6.5 Either the Supplier or the Client may cancel the order for any reason prior to the Client's acceptance (or rejection) of this quotation.
- 6.6 If the Client wishes to vary any details of the Services it must notify the Supplier in writing as soon as possible. The Supplier shall endeavour to make any required changes and additional costs shall be invoiced to the Client.
- 6.7 If, due to circumstances beyond its control, the Supplier has to make any change in the Services or the arrangements relating to the provision thereof, it shall notify the Client immediately. The Supplier shall endeavour to keep any such changes to a minimum and shall seek to offer the Client arrangements as close to the original as is reasonably possible in the circumstances.

## 7. Payment

- 7.1 Following the Client's acceptance of this quotation, the Supplier shall invoice the Client for the Fees either:
  - (a) upon completion of its provision of the Services; or
  - (b) on the invoice dates set out in this quotation.
- 7.2 The Client shall pay the Fees due within 24 hours of the date of the Supplier's invoice or otherwise in accordance with any credit terms agreed between the Supplier and the Client.
- 7.3 Time for payment shall be of the essence of the Contract between the Supplier and the Client.
- 7.4 If the Client fails to make payment within the period in sub-Clause 7.2, the Supplier shall charge the Client interest at the rate of 5% per annum above the Bank of England base rate from time to time on the amount outstanding until payment is received in full.
- 7.5 If the Client fails to make payment within the period in sub-Clause 7.2, the Supplier shall have the right to suspend any further provision of the Services and to cancel any future services which may have been ordered by, or otherwise arranged with, the Client.
- 7.6 Receipts for payment will be issued by the Supplier only at the Client's request.
- 7.7 All payments must be made in £ Sterling unless otherwise agreed in writing between the Supplier and the Client.

## 8. Sub-Contracting

- 8.1 The Supplier shall be free to sub-contract the provision of the Services (or any part thereof).
- 8.2 Where the Supplier sub-contracts the provision of the Services or any part thereof it shall ensure that any and all sub-contractors are reasonably skilled in the relevant practices and shall not pass any additional charges that may be incurred through the use of such sub-contractors on to the Client.

## 9. Termination

- 9.1 The Supplier may terminate the provision of the Services immediately if:
  - (a) the Client commits a material breach of its obligations under these Terms and Conditions; or
  - (b) the Client is or becomes the subject of a bankruptcy order or takes advantage of any other statutory provision for the relief of insolvent debtors.
  - (c) the Client enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with its creditors; or
  - (d) the Client convenes any meeting of its creditors, enters into voluntary or compulsory liquidation, has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertakings or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Client, notice of intention to appoint an administrator is given by the Client or any of its directors or by a qualifying floating charge holder (as defined in para. 14 of Schedule B1 of the Insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Client or for the granting of an administration order in respect of the Client, or any proceedings are commenced relating to the insolvency or possible insolvency of the Client.

## 10. Intellectual Property

The Supplier reserves all copyright and any other intellectual property rights (if any) which may subsist in the products of, or in connection with, the provision of the Services. The Supplier reserves the right to take such action as may be appropriate to restrain or prevent the infringement of such intellectual property rights.

## 11. Liability and Indemnity

- 11.1 The Supplier will not be liable by reason of any representation, implied warranty, condition or other term, or any duty at common law or under these Terms and Conditions, be liable for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims (whether caused by the Supplier's employees, agents or otherwise) in connection with its provision of the Services or the performance of any of its other obligations under these Terms and Conditions or this quotation or with the use by the Client of the Services supplied.
- 11.2 The Supplier shall not be liable to the Client or be deemed to be in breach of these Terms and Conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if such delay or failure is due to any cause beyond the Supplier's reasonable control.
- 11.3 The Client shall indemnify the Supplier against all damages, costs, claims and expenses suffered by the Supplier arising from any loss or damage to any equipment (including that belonging to third parties) caused by the Client or its agents or employees.
- 11.4 Nothing in these Terms and Conditions shall limit or exclude the Supplier's liability for death or personal injury caused by its negligence or for any other matters for which it would be unlawful to exclude or limit liability.

## 12. Post-Migration Support Warranty Period.

12.1 SEM will provide post-migration support at no additional cost to assist Client to resolve any migration related issues within ten (10) days after the completion of the project. The project will be deemed to be complete once the services are live on the new hosting environment. For any migration related issues requiring support after the expiration of the ten (10) day period, Client understands and agrees that it will be required to pay £70.00 per hour for work performed by SEM pursuant to such support or assistance request. This rate is subject to change from time to time and without prior notice to Client.

## 13. Force Majeure

Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, Internet Service Provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

## 14. Communications

- 14.1 All notices under these Terms and Conditions shall be in writing and signed by, or on behalf of, the party giving notice (or a duly authorised officer of that party).
- 14.2 Notices shall be deemed to have been duly given:
  - (a) when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient;
  - (b) when sent, if transmitted by fax or email and a successful transmission report or return receipt is generated;
  - (c) on the fifth business day following mailing, if mailed by national ordinary mail; or
  - (d) on the tenth business day following mailing, if mailed by airmail.
- 14.3 All notices under these Terms and Conditions shall be addressed to the most recent address, email address or fax number notified to the other party.

## 15. No Waiver

- 15.1 No waiver by the Supplier of any breach of these Terms and Conditions by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.2 No failure or delay on the part of either the Supplier or the Client to exercise any right, power or privilege under these Terms and Conditions shall operate as a waiver of, nor shall any single or partial exercise of any such right, power or privilege preclude, any other or further exercise of any other right, power or privilege.

## 16. Law and Jurisdiction

- 16.1 These Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 16.2 Any dispute, controversy, proceedings or claim between the Seller and the Buyer relating to these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.